

GEOFFREY S. BERMAN
United States Attorney for the
Southern District of New York
By: JOHN E. GURA, JR.
Assistant United States Attorney
86 Chambers Street
New York, New York 10007
Telephone: (212) 637-2712
FAX No. (212) 637-2717

USCIS DNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 4/24/19

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

Plaintiff and
Judgment-Creditor,

- v. -

STIPULATION AND ORDER OF
GARNISHMENT AND RELEASE

MARIE BARAN,

11 CR 1091 (VM)

Defendant and
Judgment-Debtor,

and

PERSHING LLC,

Garnishee.

-----X

WHEREAS, on December 8, 2016, the Court granted the United States of America's (the "United States" or "plaintiff") amended application for a writ of garnishment;

and

WHEREAS, on January 19, 2017, Pershing LLC (the "Garnishee") served and filed an answer in response to the writ, stating that it had custody of defendant's Dreyfus Lion IRA, with an approximate value of \$152,199.13; and

WHEREAS, defendant did not file an objection to the amended writ or otherwise respond to the answer of the Garnishee, and the Government sought an Order of Garnishment;



and

WHEREAS, on March 14, 2017, the Court issued an Order of Garnishment (the "Order") ordering the Garnishee to liquidate and pay to the Government all monies held by the Garnishee in defendant's Dreyfus Lion IRA; and

WHEREAS, on June 5, 2017, the Court so-ordered the parties' stipulation: 1) vacating the Order; 2) directing Pershing LLC to continue to withhold and restrain any property in which defendant has an interest, including, but not limited to, defendant's Dreyfus Lion IRA, until further order of this Court; and 3) not precluding the Government from seeking to liquidate the IRA after defendant's release from incarceration, nor precluding defendant from filing any objection to such relief; and,

WHEREAS, defendant was released from incarceration in December 2018, and was compelled to take a Required Minimum Distribution ("RMD") in calendar year 2018, from her Dreyfus Lion IRA held by Pershing LLC;

WHEREAS, on December 27, 2018, the Court so-ordered the parties' stipulation: 1) directing Pershing LLC to pay an RMD of \$6,500.00, from the defendant's Dreyfus Lion IRA to the Clerk of the Court; 2) directing the Clerk of the Court not disburse the RMD funds until receiving further order of the Court; 3) directing Pershing LLC to continue to withhold and restrain any property in which defendant has an interest, including, but not limited to, the balance of defendant's Dreyfus Lion IRA, until further order of this Court; and 4) not precluding the Government from seeking to liquidate defendant's Dreyfus Lion IRA in the future, nor precluding defendant from filing any objection to such relief.

WHEREAS, on January 17, 2019, Pershing LLC paid an RMD from defendant's

Dreyfus Lion IRA by check in the amount of \$6,500.00, to the Clerk of the Court and mailed the check to the United States Courthouse;

WHEREAS, the Clerk of the Court received the check in the amount of \$6,500.00 described above, negotiated the check, and deposited the funds in its account;

WHEREAS, the Clerk of the Court continues to hold the \$6,500.00 RMD payment pending further order of the Court;

WHEREAS, on March 27, 2019, the Court entered an Amended Judgment against the defendant, which included a Modification of Restitution Order directing defendant to pay restitution in monthly installments of 10% of her gross monthly income: and

WHEREAS, the parties wish to amicably resolve the matter of defendant's January 17, 2019 RMD payment and all future payments made by Pershing LLC from defendant's Dreyfus Lion IRA;

NOW, on the signed consent of the United States and defendant,

IT IS HEREBY STIPULATED AND AGREED as follows:

1. Regarding the previously paid RMD of \$6,500.00, the Clerk of the Court shall: i) retain \$650.00 of the proceeds and apply those funds to defendant's restitution obligation in this case; and, ii) pay defendant \$5,850.00 by check issued in the name of "Marie Baran" and mailed to defendant's counsel:

Peter J. Tomao, Esq.
600 Old Country Road, Suite 328
Garden City, New York 11530;

2. For any payment requested by defendant or otherwise paid from defendant's Dreyfus Lion IRA, Pershing LLC shall; i) pay 10% of the gross of any distribution by check

made payable to the Clerk of the Court, and mailed to the United States Courthouse, 500 Pearl Street, New York, New York 10007, attn: Cashier, with the notation: Marie Baran, 11 CR 1091 (VM); and, ii) pay the balance of any distribution, less the above-noted 10% allotment, by check to defendant Marie Baran in accordance with her instructions:

3. Except as described in the paragraph 2 above, Pershing LLC will to continue to withhold and restrain any property in which defendant has an interest, including, but not limited to, the balance of defendant's Dreyfus Lion IRA, until further order of this Court;

4. This Order does not preclude the Government from seeking to liquidate the Dreyfus Lion IRA in the future, nor does this Order preclude defendant from filing any objection to such relief.

Dated: New York, New York
April 22, 2019

GEOFFREY S. BERMAN
United States Attorney for the
Southern District of New York
Attorney for Plaintiff

By:


JOHN E. GURA, JR.
Assistant United States Attorney
86 Chambers Street
New York, New York 10007
Telephone No.: (212) 637-2712
Fax No.: (212) 637-2717
john.gura@usdoj.gov

Dated: Garden City, New York
April 22, 2019

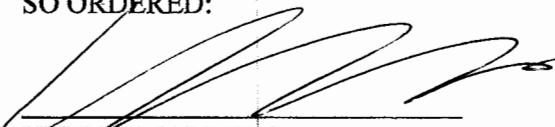
LAW OFFICE OF PETER J. TOMAO
Attorney for Marie Baran

By:


PETER J. TOMAO, Esq.
Law Office of Peter J. Tomao
600 Old County Road
Suite 328
Garden City, NY 11530
Telephone No.: (516) 877-7015
ptomao@tomaolaw.com

Dated: New York, New York
April 24, 2019

SO ORDERED:


VICTOR MARRERO
UNITED STATES DISTRICT JUDGE

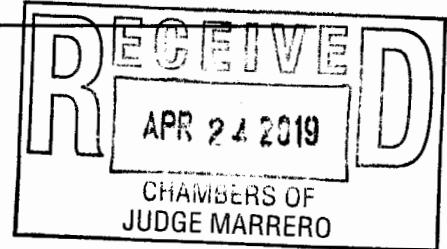
U.S. Department of Justice



*United States Attorney
Southern District of New York*

86 Chambers Street
New York, New York 10007

April 22, 2019



By Hand

Hon. Victor Marrero
United States District Judge
United States Courthouse
500 Pearl Street
New York, New York 10007

Re: United States v. Lesniewski et al.,
11 Cr. 1091 (VM)

Dear Judge Marrero:

The Government respectfully submits the parties' stipulation and proposed order of garnishment executed for the purpose of repaying restitution, which was ordered by the Court. If the Court approves, we ask that the order be entered on the court's docket. We thank the Court for its consideration of this matter.

Respectfully,

GEOFFREY S. BERMAN
United States Attorney

By:

JOHN E. GURA, Jr.
Assistant United States Attorney
Telephone: (212) 637-2712
Fax: (212) 637-2750

Encl.

cc: Peter Tomao, Esq.
(By Mail)